

REPRESENTATIVE FOR PETITIONER: Barry A. Macey, Attorney-at-Law

REPRESENTATIVE FOR RESPONDENT: Charles K. Todd, Jr., Attorney-at-Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

UNION BUILDING)	Petition No.:	89-011-02-2-8-00016
CORPORATION,)		
)	County:	Wayne
Petitioner,)		
)	Parcel No.:	0110066700 and
v.)		Personal Property
)		
WAYNE COUNTY PROPERTY)	Assessment Year:	2002
TAX ASSESSMENT BOARD)		
OF APPEALS,)		
)		
Respondent.)		

Appeal from the Final Determination of the
Wayne County Property Tax Assessment Board of Appeals

February 4, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and the evidence in this matter. The Board now enters the following findings and conclusions on the issues that were presented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

Does the subject real and personal property qualify for complete or partial property tax exemption under Ind. Code § 6-1.1-10-36.3?

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-11-7, Barry A. Macy, on behalf of Union Building Corporation (Petitioner), filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on October 8, 2003. The determination of the Wayne County Property Tax Assessment Board of Appeals (PTABOA) was issued on September 8, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 29, 2004, in Richmond, Indiana, before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

3. The following persons were present at the hearing:

For Petitioner — Barry A. Macey, Attorney-at-Law;
Maurice Davison, Assistant Director, United Auto Workers (UAW), Region 3;
Tammy Robertson, President UAW Local 1073;
Benford Green, Financial Secretary;
Michael Bauer, President UAW Local 1244;

For Respondent — Charles K. Todd Jr., Attorney-at-Law;
Michael P. Statzer, Wayne County Assessor;
Joseph L. Kaiser, President, Wayne County PTABOA;
Marie Elstro, Member, Wayne County PTABOA;

Betty R. Smith, Wayne Township Assessor.

4. Persons sworn as witnesses at the hearing were:

For Petitioner — Maurice Davison, Assistant Director, UAW, Region 3;
Tammy Robertson, President UAW Local 1073;
Benford Green, Financial Secretary;
Michael Bauer, President UAW Local 1244;
For Respondent — Michael P. Statzer, Wayne County Assessor;
Joseph L. Kaiser, President, Wayne County PTABOA;
Marie Elstro, Member, Wayne County PTABOA;
Betty R. Smith, Wayne Township Assessor.

5. The following exhibits were presented:

Petitioner's Exhibit 1 – Articles of Incorporation for the Richmond UAW Building Corporation;
Petitioner's Exhibit 2 – The By-Laws for the Richmond UAW Building Corporation;
Petitioner's Exhibit 3 – A copy of the 1974 Application for Exemption, Form 136, for the property owned by the Richmond UAW Building Corporation;
Petitioner's Exhibit 4 – A copy of the 1974 Form 120, Final Determination, denying exemption for the property owned by the Richmond UAW Building Corporation;
Petitioner's Exhibit 5 – A copy of the 1974 Form 132 petition for the property owned by the Richmond UAW Building Corporation;
Petitioner's Exhibit 6 – A copy of the Final Determination issued by the State Board of Tax Commissioners resulting from the 1974 Form 132 petition;
Petitioner's Exhibit 7 – A copy of the 2000 Application for Exemption, Form 136, for the property owned by the Richmond UAW Building Corporation;
Petitioner's Exhibit 8 – A copy of the 2002 Application for Exemption, Form 136, for the property owned by the Richmond UAW Building Corporation;
Petitioner's Exhibit 9 – A copy of the 2002 Form 132 petition for the property owned by the Richmond UAW Building Corporation;

- Petitioner's Exhibit 10 – A copy of the 2002 Form 120, Final Determination, issued by the PTABOA;
- Petitioner's Exhibit 11 – A copy of the Order of the Marion County Superior Court issued November 28, 1973, addressing the exempt status of property owned by the UAW;
- Petitioner's Exhibit 12 – The Restated Articles of Incorporation for the Union Building Corporation;
- Petitioner's Exhibit 13 – A copy of the 2000 Form 103, Business Tangible Personal Property Return, and Form 136, Application for Exemption, for the property located in Hagerstown;
- Petitioner's Exhibit 14 – A copy of the 2004 Form 136, Application for Exemption, for the property located in Hagerstown;
- Petitioner's Exhibit 15 – A copy of the 2004 Form 120, Final Determination, for the property located in Hagerstown;
- Petitioner's Exhibit 16 – A copy of a Form 136, Application for Exemption, for the year 2002;
- Petitioner's Exhibit 17 – A copy of the 2002 Form 120, Final Determination, for the property located at Hagerstown;
- Petitioner's Exhibit 18 – A copy of the 2002 Form 132, Request for Review of Exemption, for the property located at Hagerstown;
- Petitioner's Exhibit 19 – Copies of the 2002 Forms 990s and 990t for the property located at Hagerstown;
- Petitioner's Exhibit 20 – A copy of an order of Permanent Injunction issued by the Marion County Superior Court on December 31, 1974;
- Petitioner's Exhibit 21 – A copy of a State Board of Tax Commissioner Final Determination, Form 118, issued on September 7, 1995, pertaining to property owned by the Union Building Corporation in Marshal County;
- Petitioner's Exhibit 22 – A copy of the 2000 Form 990s for Union Building Corporation;
- Petitioner's Exhibit 23 – A copy of the Constitution of the UAW adopted June 1998.

6. The following additional items are officially recognized as part of the record of proceedings:
Board Exhibit A – The subject Form 132 with attachments;
Board Exhibit B – The Notice of Hearing.
7. Petitioner claims the subject property qualified for 100 percent property tax exemption because it was exclusively used for exempt purposes. At the hearing, the parties agreed that the subject property qualified for some exemption, but they did not agree on whether it should be a complete or partial exemption.
8. The subject property is a building on 1.17 acres of land and business personal property items located at 500 State Road 38, Hagerstown in Jefferson Township, Wayne County.

JURISDICTIONAL FRAMEWORK

9. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

STATE REVIEW AND PETITIONER'S BURDEN

10. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
11. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp.*

Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

12. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

CONSTITUTIONAL AND STATUTORY BASIS FOR EXEMPTION

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
14. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep’t of Rev.*, 667 N.E.2d 810 (Ind. Tax Ct. 1996) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm’rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

BASIS OF EXEMPTION AND BURDEN

16. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1996); *Indiana Ass’n of Seventh Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

ANALYSIS

Does the subject real and personal property qualify for complete or partial property tax exemption under Ind. Code § 6-1.1-10-36.3?

20. The Petitioner contends that the sole use of the subject property is for the purposes of the Union and it is 100 percent exempt.

21. The Respondent contends that the Petitioner failed to present sufficient evidence to allow complete exemption for 2002.

22. The applicable law governing this issue is:

Ind. Code § 6-1.1-10-16

(a) All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

(e) Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.

Ind. Code § 6-1.1-10-36.3

Property is predominately used or occupied for an exempt purpose if it is used or occupied for the exempt purpose during more than 50% of the time it is used or occupied during the assessment year in question. Property that is exclusively used or occupied for an exempt purpose during the assessment year is 100% exempt from property taxation. Property that is predominately used or occupied for an exempt purpose, other than for religious, church or not-for-profit school purposes, is exempt in proportion to the percentage of time the property is used or occupied for the exempt purpose.

23. A "predominant use" test was adopted for determining whether property qualifies for exemption under Ind. Code § 6-1.1-10. "Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes." *State Bd. of Tax Comm'rs v. New Castle Lodge #147*, 765 N.E.2d 1257, 1263 (Ind. 2002).

24. The subject property was not used by anyone for any commercial activities. There have been requests to rent the building for other uses such as weddings and receptions, but those requests were not allowed. Petitioner did not rent the property to others. *Davidson testimony*.

25. The Union's retirees use the subject property for monthly meetings. The retirees, widows of union members, and the ladies auxiliary use it for educational purposes, such as aerobic classes and computer orientation classes. *Id.*
26. The Red Cross has monthly meetings there and Girl Scouts have weekly meetings there. The Red Cross and the Girl Scouts are allowed to use the building at no cost. *Davison testimony.*
27. Respondent raised questions regarding the amount of property tax exemption that should be allowed, but offered no probative evidence of any non-exempt use.
28. For March 1, 2002, Petitioner has established that the subject real and personal property in Hagerstown met the requirements for 100 percent exemption according to Ind. Code § 6-1.1-10-16(a) and (e), as well as Ind. Code § 6-1.1-10-36.3.

SUMMARY OF FINAL DETERMINATION

29. The Board finds in favor of the Petitioner. The Petitioner established a prima facie case that the subject property is used exclusively for its exempt purposes. The Respondent did not rebut the prima facie case. Therefore, Petitioner has successfully shown that the subject property, both real and personal, is entitled to 100 percent exemption.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.